IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.4877 OF 2003

Union of India through)
General Manager, Parel C.S.T.)
Central Railway, Mumbai).. PETITIONERS

VERSUS

1) Smt.Vidhata)
Wd/o late Shri Ramnayan Verma)
Ex-Crane Driver, residing at)
Room No.3, Sundar Kamal Nagar)
Matunga (C.R.), Mumbai 400 019)

2) Shri Mayaram)
S/o late Shri Ramnayan Verma)
Ex-Crane Driver, residing at)
Room No.3, Sundar Kamal Nagar)
Matunga (C.R.), Mumbai 400 019).. RESPONDENTS

Mr.S.C. Dhawan with Mr.T.J.Pandian for the Petitioners.

Mr.G.K. Masand with Mrs.Rita Singh i/b.Smt.S.D. Gulhane & Co. for the Respondents.

CORAM: V.G. PALSHIKAR, Ag. C.J. AND SMT. NISHITA MHATRE, J.

DATED: 20TH FEBRUARY 2006

ORAL JUDGMENT : (PER MHATRE, J.)

. The Petitioners, Union of India, have challenged the Order dated 4th April 2003 passed by the Central Administrative Tribunal, Mumbai Bench in Original Application No.159 of 1993. The Tribunal has allowed the Original Application by directing that terminal benefits, like gratuity, family pension, cash equivalent of earned leave, provident fund, arrears of salary, etc.

be paid over to the legal heirs of Ramnayan Verma who was employed with the Central Railway. Ramnayan Verma (hereinafter referred to as "the employee") expired on 20th November 1992.

2. It is the case of the Petitioners that Ramnayan Verma, who was working as a Steam Crane Driver in the Central Railway Workshop at Parel, had assaulted the Senior Shop Superintendent causing serious injuries to him. The employee was placed under suspension on 11th February 1992. The fact finding committee appointed by the Railways submitted its report on 14th February 1992. Several workers had admitted that the employee had assaulted the Senior Shop Superintendent. However, the Petitioners thought it fit to dispense with the enquiry as it was felt that no witnesses would be willing to depose at a departmental enquiry if instituted against the employee. Taking recourse to Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred to as "the Rules), the Petitioners removed the employee from service with immediate effect. The employee having expired on 20th November 1992, his heirs and legal representatives filed an Original Application before the Central Administrative Tribunal, Mumbai Bench, challenged the order of punishment of removal from service as it was based without holding an enquiry against the employee. Consequential reliefs

were also sought in the Original Application, namely, payment of legal dues. This Application was filed on 26th February 1993. The Petitioners contested the Original Application filed by the legal heirs of the employee. The question as to whether an Original Application filed by the legal heirs is maintainable was referred to the Full Bench of the Tribunal which opined that such an Application was not maintainable. Writ Petition No.4856 of 1998 was filed before this Court by the Respondents. It appears that on 20th January 2003, a Five Member Bench of the Tribunal resolved the issue and held an action can be maintained by the legal heirs of a deceased employee. Accordingly, an order remanding the matter to the Tribunal was passed. The Tribunal on 4th April 2003 has passed the impugned judgment.

3. The Tribunal has rejected the plea taken by the Petitioners that it was not reasonably practicable to hold an enquiry in the manner provided under the Rules. The Tribunal was of the view that there was no reason for dispensation of the enquiry against the employee and, therefore, has set aside the order of removal from service of the employee. As a consequence, the Tribunal directed that the employee should be treated to have continued in service from the date of his removal till the date of his death on 20th November 1992. A further direction was issued regarding payment of full salary

and allowances for this period as well as for payment of terminal benefits and family pension.

4. The learned Counsel appearing for the Petitioners contends that the Tribunal has erred in reviewing the decision taken by the Petitioners under Rule 14(ii) of the Rules applicable. Reliance is placed on the case of *Union of India* vs. *Tulsiram Patel and other*, **AIR 1985 SC 1416**, *Satyavir Singh and others* vs. *Union of India and others*, **AIR 1986 SC 555** and *Indian Railway Construction Co. Ltd.* vs. *Ajay Kumar*, **(2003) 4 SCC 579**, by drawing an analogy between Section 311(2) Second Proviso Cl. (b) of the Constitution of India and Rule 14(ii) of the Rules. The learned Counsel submits that the facts in the present case indicated that none of the eye witnesses to the incident were willing to depose at the departmental enquiry, if held, and, therefore, the Disciplinary Authority was of the view that it was necessary that a departmental enquiry be dispensed with under Rule 14(ii) of the Rules. The learned Counsel further submits that in view of the fact that the employee was dismissed from service, the terminal benefits available to him are forfeited under the Rules.

5. The Tribunal, in our opinion, has rightly considered the facts obtaining in the present case and

has held that the decision to dispense with the enquiry was totally perverse. The report of the fact finding enquiry indicates that several workers admitted that the employee had assaulted the Senior Shop Superintendent. However, the fact finding enquiry report further reveals that based on statements and information received from various persons employed at the shop, no other persons were willing to come forward as eye witnesses for fear of their personal safety. The Disciplinary Authority relied on this finding and dispensed with the enquiry. In our opinion, the Disciplinary Authority has erred at this conclusion without there being any material on record to the effect that the employee had in any manner created obstacles in the way of the so-called eye witnesses from deposing at a departmental enquiry, if instituted. There is no material on record to indicate that the potential witnesses were in fact threatened by the employee. Furthermore, there was no reason to dispense with the enquiry when the complainant i.e. the Senior Shop Superintendent could have been examined at a departmental enquiry. The Disciplinary Authority has dispensed with the departmental enquiry in an arbitrary fashion without there being any basis to show that it was not reasonably practicable to hold an enquiry in the manner provided under the Rules. The satisfaction of the Disciplinary Authority which is to be exercised under Rule 14(ii) of the Rules must be such as would

inspire confidence and should not be exercised in a capricious and whimsical manner.

6. The Supreme Court in the case of *Satyavir Singh* (supra), has analysed the provisions of law and the conclusions reached by the majority in *Tulsiram Patel's* case (supra) and has observed as under :-

> 57. It is not a total or absolute impracticability which is required by Cl. (b) of the second proviso. What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation.
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> 58. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority and must be judged in the light of the circumstances then prevailing. The disciplinary authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of the prevailing situation that Cl. (3) of Art. 311 makes the decision of the disciplinary authority on this question final.
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> 59. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be -
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> (a) where a civil servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so, or
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> (b) where the civil servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is

afraid to hold the inquiry or direct it to be held, or

(c) where an atmosphere of violence or of general indiscipline and insubordination prevails, it being immaterial whether the concerned civil servant is or is not a party to bringing about such a situation. In all these cases, it must be remembered that numbers coerce and terrify while an individual may not.

60. The disciplinary authority is not expected to dispense with a disciplinary inquiry rightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the civil servant is weak and must fail.

7. Although, as pointed out by the Apex Court, the instances mentioned aforesaid are only illustrative, it appears to us that the reason for dispensation of an enquiry must be grave enough or the attending circumstances must be such that the situation warrants an errant employee be removed. Rule 14 would come into play only in such a situation. In our opinion, the reasons for dispensation of the enquiry are far removed from those which are contemplated under Rule 14(ii) of the Rules. Paragraph 108 of *Satyavir Singh's* case (supra) throws light on how the Court must consider the circumstances under which the disciplinary authorities can dispense with enquiries on the ground that it is not reasonably practicable to hold an enquiry. Paragraph 108 reads thus :-

> 108. In examining the relevancy of the reasons given for dispensing with the inquiry, the Court will consider the circumstances which, according to the disciplinary authority, made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the Court finds that the reasons are irrelevant, the order dispensing with the inquiry and the order of penalty following upon it would be void and the Court will strike them down. In considering the relevancy of the reasons given by the disciplinary authority, the Court will not, however, sit in judgment over the reasons like a Court of first appeal in order to decide whether or not the reason are germane to Cl. (b) of the second proviso or an analogous service rule. The Court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable manner would have done. It will judge the matter in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a Court-room, removed in time from the situation in question. Where two views are possible, the Court will decline to interfere.
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> (Emphasis supplied)

8. There is no material on record to demonstrate that the prevailing situation was such that it was not conducive for holding a departmental enquiry. Interpreting Rule 14 to mean that an action taken under this Rule cannot be questioned in a Court of law at all is, in our opinion, a misreading of the Rule. Rule 14 does not in any manner bar a judicial review of the action. The Tribunal has not committed any error in setting aside the order of removal from service.

9. The learned Counsel for the Petitioners' insisted that the gratuity and other terminal benefits have been forfeited since the employee has been removed from service. In the view we have taken that the removal itself was bad, we have no hesitation in directing that all terminal benefits and other dues as stated in paragraph 9 of the impugned judgment of the Tribunal must be paid to the Respondents.

10. In our opinion, there is no error of law much less an error of law apparent on the face of record for setting aside the impugned judgment and order dated 4th April 2003 passed by the Central Administrative Tribunal in Original Application No.153 of 1993. There is no perversity in the findings of the Tribunal and, therefore, this Court need not exercise its jurisdiction under Articles 226 and 227 of the Constitution of India. The Writ Petition is without merit and deserves to be dismissed. The impugned judgment and order is confirmed. The Respondents have been awaiting the decision in the Original Application since 1992 and they have not been paid the legal dues of the employee from March 1993. The dues be paid to them at the earliest.

11. Rule discharged. No order as to costs.

(V.G. PALSHIKAR, Ag.C.J.)

(SMT.NISHITA MHATRE, J.)